

#### D. REMARKS

##### ***Status of the Claims***

Claims 1-8, 10-13, 15-20, 22-29, and 31-33 are pending in the application. Claims 1, 15, and 25 are amended. Claims 9, 14, 21, and 30 are cancelled.

##### ***Interview Summary***

Applicants' representative conducted a telephonic interview with Examiner Urick on December 19, 2006 at 10 AM EST. No exhibits were shown nor demonstrations presented.

First, Examiner Urick stated that in view of the allowance of independent system claim 13, method and program product claims mirroring the elements of system claim 13 would also be allowable. Second, Examiner Urick indicated that independent method claim 15 and independent program product claim 25 would also be allowable if amended to incorporate the elements of dependent claim 9, which is allowable. In addition, Applicants presented a proposed incorporation of claim 9 into claim 1, which is the same presentation of claim 1 herein. The Examiner accepted the proposed incorporation of the claims pending a review of the specification.

Second, as to the proposed new program product claim and the existing program product claims, Examiner Urick indicated that the program product claims would need to be amended to overcome a potential 101 rejection. Applicants' representative proposed an amendment to the program product claims, to claim a tangible medium, by limiting the computer readable medium to a volatile or non-volatile media, based on paragraph 0042 of the specification of the present invention, which distinguishes volatile and non-volatile media from transmission media.

Third, Applicants' representative asserted that Gadir (US Publication 2003/0018927) in view of Cramer (US Patent 6,920,580) does not teach or suggest each and every element of claims 1, 15 and 25, because Gadir does not teach wherein a first selection of said plurality of layers of said redundant middleware stack are active.

and a second selection of said plurality of layers of said redundant middleware stack are in standby or wherein said selection of said plurality of layers of said active middleware stack correspond to said second selection of said plurality of layers of said redundant middleware stack in standby. Examiner Urick agreed that Gadir does not distinguish between some servers of a node that are active and others servers of a node that are in standby and therefore Gadir does not teach some layers of a middleware stack that are active and other layers of a middleware stack in standby.

***Pending Claims are Allowable***

The Office Action allows independent system claim 13. [Office Action, p. 23] Applicants add a new independent method claim 34 and a new independent program product claim 35, incorporating the elements of allowed independent system claim 13. Therefore, Applicants respectfully assert that claims 34 and 35 are allowable subject matter based on at least the same grounds that claim 13 is allowable.

In addition, in the Office Action, the Examiner objects to claim 9 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. [Office Action, p. 22] Applicants amend base claim 1 to incorporate the elements of claim 9. Applicants note that in incorporating claim 9 into base claim 1, Applicants incorporate the element of "means, responsive to detecting said failure at said primary node, for sending a shutoff command via said first connection means for turn off power to said first power supply" to read a heartbeat monitor for detecting a failure at said primary node, wherein in response to detecting said failure at said primary node, said heartbeat monitor transfers said virtual IP address from said primary node to said secondary node, said heartbeat monitor sends a shutoff command via said first connection means to turn off power to said first power supply said primary node, said heartbeat monitor remounts said data replication partition for access by said secondary node, said heartbeat monitor activates said second selection of said plurality of layers of said redundant middleware stack requiring access to said data within said

data replication partition. During the Interview, the Examiner indicated that the proposed incorporation of claim 9 into claim 1 would be allowable if the specification supports the amendment. Applicants respectfully note that paragraphs 0060 and 0082 describe that the heartbeat monitor calls a function to turn off the power of the requested power supply and therefore, the specification supports the amendment of replacing the “means for” in claim 9 with the heartbeat monitor; no new matter is added through the amendment of claim 1 to incorporate allowable claim 9. Therefore, Applicants respectfully request allowance of claim 1 as the base claim incorporating allowable claim 9. In addition, Applicants amend independent claims 15 and 25, which mirror independent claim 1, to incorporate the elements of allowable claim 9 and Applicants respectfully request allowance of claims 15 and 25 as amended to incorporate allowance subject matter.

In addition, as to program product claims 25-29, 31-33, and 35 pending in the present application, Applicants note that independent program product claims 25 and 35 are each limited to a volatile or non-volatile computer readable medium. Paragraph 0042 of the specification of the present invention specifies volatile and non-volatile media as forms of a computer readable medium specifically distinguished from a transmission media. Therefore, in view of the limitation to a computer program product residing on a volatile or non-volatile computer readable medium, in claims 25 and 35, the claimed invention is directed to statutory subject matter as required under 35 USC 101 and is presented in a form for allowance.

Therefore, regardless of whether the rejections in the Office Action under 103(a) are correct, Applicants amend the claims so that only previously allowed subject matter is pending in the claims. Applicants respectfully request issuance of a timely notice of allowance of the currently pending claims.

***Conclusion***

Applicants note the citation of pertinent prior art cited by the Examiner.

In view of the foregoing, withdrawal of the rejections and the allowance of the current pending claims is respectfully requested. If the Examiner feels that the pending claims could be allowed with minor changes, the Examiner is invited to telephone the undersigned to discuss an Examiner's Amendment.

Respectfully submitted,

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